

January 24, 2014

TO: Members of the AB1050 Executive Steering Committee

FROM: David Lovell, Board of State and Community Corrections

Re: Defining Key Terms According to AB1050

Objectives

AB1050 requests BSCC to develop definitions of key terms—listing as examples *recidivism*, *average daily population*, and *treatment program completion rates*—to “facilitate consistency in local data collection, evaluation, and implementation” of evidence-based programs and practices. As a vehicle for discussion, we offer here some reflections on this task. We hope that members’ reactions, critical or otherwise, will advance clarity about what is required of us and how to respond. We begin by proposing an interpretation of the purpose of this legislation; next, we describe some uses to which the three identified measures may be put and what is required to make those measurements, considering recidivism in particular detail.

Clarifying key terms will assist BSCC in working with state and local criminal justice agencies to fulfill the principal duty to which AB1050 is addressed: to “collect and maintain available information” about criminal justice policies and practices in California. Consistency in the use of key terms offers two principal benefits to research and policy analysis:

1. When data concerning criminal sanctions, programs, and recidivism are assembled from a variety of sources, as BSCC must do to fulfill its research mission, the integrity of the assembled information requires that participating agencies classify and count criminal justice events the same way.
2. Making policy is a deliberative process often involving stakeholders with diverse preferences and interests. Consistency in the use of key terms will allow participants to focus on genuine issues rather than getting bogged down in terminological confusions.

These objectives govern the analysis that follows. Before proceeding, let us note what is and is not achieved by definitions of key terms. With respect to the first objective, clarification of terms, by itself, does not determine *which* things are to be counted, nor does it limit what BSCC’s collaborators may collect and report for their own purposes; it only ensures that, whichever measures or data are agreed upon as reportable across a variety of sources, the same counting rules apply. With respect to the second objective, clarity about the meaning of key terms assists interpretation of evidence, and by this means, the conduct of fruitful policy deliberations: a presumed common interest of all parties. It does not determine which of the possibly divergent interests of parties will prevail in such deliberations.

Recidivism

The core meaning of recidivism is the commission of a new criminal offense by a person who had been convicted and sanctioned for a previous offense. Such a single-sentence definition is only a starting point, because the elements that comprise it themselves require analysis and explanation. Program and policy evaluations often refer to a recidivism rate, which is defined by three elements: *what*, *who*, and *when*:

1. *What*. The narrowest and, for most researchers, the most reliable definition of *new offense* depends on courts of law to establish whether an individual actually committed a particular offense: by this standard, offenses have been committed only when a disposition of *guilty* (or equivalents, including deferred entry of judgment) has been rendered for a criminal misdemeanor or felony. This definition of new offense excludes cases dropped or dismissed, as well as non-criminal traffic offenses, regardless of guilt. Furthermore, it excludes new jail admissions and violations of supervision (parole, probation, PRCS, mandatory supervision, or other terms of release, either pretrial or post-sentence).
 - While new jail admissions and supervision violations do not count as *new offenses* per se, they may be classified as forms of recidivism, depending on policy objectives. For example, if a program aims at reducing violations or jail admissions, these outcomes mean as much as new offenses. Furthermore, it is useful to track these events because their patterns may shed light on new offense recidivism and other outcomes of interest.
 - In some contexts, legally adjudicated new offenses in the community may not apply: for example, inside prisons, one may wish to measure, and for convenience describe as a form of recidivism, prison rule infractions by inmates who had previously been disciplined and segregated for infractions.

New offense recidivism, invoking a legal standard for conduct that violates the law and threatens the safety of others, occupies a privileged position in assessing how well the public is protected by criminal justice policies and programs. There is little dispute that if a subject has been convicted of a new criminal offense, he is a recidivist; dispute is possible, of course, about whether that's too much to require. The priority of new convictions does not mean that other measures should be ruled out; rather, it means that if other measures are reported, the reference should be specified and their use explained. We explain below the elements that are useful to specify, whatever measure of *what* is applied.

If *new offense* is extended to arrests as well as to convictions, it is important to clarify how arrests are counted: for example, as a recorded law enforcement stop resulting in some form of detention, even if only temporary; or more narrowly, as a law enforcement stop followed by the filing of criminal charges.

- Charges for new offenses are one among many reasons for which people may be arrested and returned to jail. As explained above, jail admissions may be counted independently of convictions and yield a useful measure of behavior for some purposes. But connecting jail admissions with court cases is complicated, not only because it requires local data but because one person may be admitted many times on the same case, and many cases may apply to a single admission. For this reason it is useful to distinguish, and count separately, cases and admissions.
 - The narrower definition of arrest that includes filing a case is convenient to count, since at that point charges and dispositions become part of the same court dataset. Because of local variations in criminal behavior, law enforcement, prosecution, defense, and adjudication, jurisdictions will differ in the percentage of cases resulting in convictions. For this reason, tracking both cases and convictions is both practical and useful, not only as a measure of offender behavior, but as an indicator of other factors that may shed light on differences in patterns among jurisdictions.
2. *Who.* How is the population defined, for which a recidivism rate is being measured? Rate statistics will differ substantially, for example, between the population of people being released from prison for felony convictions and the far less selective population of everyone who has ever been arrested or admitted to jail. Data elements needed to define *Who* are explained below.
- *Cohort Definition.* Studies of behavior over time use the term “cohort” to refer to a group of people who share, among other things, a common date range for the event(s) that qualify them as study subjects. For example, studies might distinguish two cohorts of offenders: those convicted during the two years before Realignment and those convicted during the next two years.
 - *Index offense* refers not to the FBI’s eight Part I index offenses in the Uniform Crime Reporting (UCR) system, but to the previous offense that establishes a subject’s membership in the recidivism study population. Particular types of index offense (e.g., sex offenses) may be included, along with date parameters, in the criteria for study subject status.
 - *Inclusion and Exclusion Criteria.* A cohort is defined in the first place by a date range, but study populations may be further defined by offense (felons with 1170h offense), agency (released from prison), supervision status, and treatment program participation.
- Example:* Reference group = people convicted during the two year period before October 1, 2011 of felony offenses to which, later under Realignment, PC1170h would apply; Realignment group = people convicted of PC1170h felony offenses during the two-year period beginning October 1, 2011.

- *Censoring Subjects.* One particular exclusion criterion deserves special mention because one may not know, before collecting data, to whom it will apply. In a study of released offenders, some of them may have died, left the state, been admitted to state hospitals, or been detained on warrants for previous offenses. If they are deceased, incarcerated or out of measurement range for reasons other than a new offense during substantial portions of the study period, and if those subjects had committed no new offenses before disappearing from view, they are *censored*.

3. *When.* When do we begin tracking recidivist behavior, and when do we stop?

- *Index date.* We begin with the index date, which divides criminal history from new offenses for the purposes of a recidivism study. For most studies, the index date is the date of the subject's latest release from jail or prison during the index period (i.e., the period that defines a study cohort). For some purposes, such as evaluating a community-based treatment program, it is reasonable to use the program entry date.

If we were to define a release cohort, for example, in terms of people released from custody between October, 2009 and October 2011, the same person may be released, re-admitted, and released again during this period. The date of someone's last release during that period may serve as the default release date, but this default may be overruled by other criteria: type of admission and type of release; type of offense (felony, misdemeanor); study constraints (the range of dates for which data are available; or study objectives (e.g., program evaluation). In such situations, it is important to make clear how the index date is determined.

- *Exposure period.* This is the period of exposure to risk in the community over which it is meaningful to report rates of recidivism. Researchers rarely report rates over anything less than an 18-month exposure period, which may be adequate for new offenses by juvenile offenders; but for some populations and offenses—for example, new sexual offenses among people released from prison for previous sex offenses—a five-year period may be needed.¹

The length of the exposure period depends on the time available for reporting on outcomes, but also on the timing of first new offenses by study subjects. Rates are

¹ Barnoski, R. 2005. *Sex Offender Sentencing in Washington State: Measuring Recidivism*. Olympia, WA: Washington State Institute of Public Policy, Document # 05-08-1202. Barnoski, R. 1997. *Standards for Improving Research Effectiveness in Adult and Juvenile Justice*. Olympia, WA: Washington State Institute of Public Policy, Document # 97-12-1201.

misleading unless we have evidence that, of subjects who will eventually commit another offense, the vast majority will have done so by the end of the exposure period.²

The exposure period should be the same in length for each subject, but date parameters will vary according to each individual's index date. The entire study period extends from the earliest index date for the subject cohort to the latest date of data collection, so it will be longer than the study period for any particular subject.³

- *Censoring Events.* For reasons just described, the data collection period often extends beyond the particular exposure period of many subjects. Events such as *new offenses* may be recorded that occurred after the end of one subject's exposure period because others in the subject pool had later index dates. To provide equal periods of exposure and therefore fair comparisons among subjects, such events are *censored*, i.e., not counted in the study population's recidivism rate.

If someone released from prison re-offends during his first three months in the community, and spends the remainder of the period in jail or in the hospital, his offense is counted; if, on the other hand, he is hospitalized except for the final three months of the study period, and commits no new offense during that time, then, as described above under *Who*, the subject would be censored.

Censoring prevents reported rates from being lowered artificially by subjects who lacked full opportunity to commit new offenses during the study period. The date at which events are censored, i.e., the end of each subject's exposure period, also provides data needed to analyze community survival patterns.

- *Adjudication Interval.* Offenses committed during the exposure period may not be adjudicated until many months later, usually in proportion to the seriousness of the charges but sometimes reflecting other procedural complications. Allowances may be made for the circumstances of a study, but allowing a year will capture almost all cases; three months is inadequate, even for many misdemeanors.

² The concept of *survival*, taken from medical literature, refers to the percentage of the population remaining free of negative outcomes over time. In a graphic representation for convicted felons released from prison, the *survival curve* starts to level off between two and three years, indicating that the vast majority of people who are likely eventually to commit new offenses will have committed their first one within three years, the standard used in federal Bureau of Justice Statistics studies (Langan P & Levin D, 2002, *Recidivism of Prisoners Released in 1994*, Washington DC: U.S. Department of Justice, Office of Justice Programs). For new sex offenses by convicted sex offenders, however, the curve continues to drop steadily during the third year—i.e., recidivism continues to rise steadily during that period—indicating that a longer period of measurement is needed.

³ This definition of the recidivism study period does not include the period, often covering many years, during which subjects may have been building criminal records; including criminal history in recidivism studies will assist interpretation of results.

Elements Needed to Measure Recidivism. For each individual in the population under study, there are a few data elements critical to producing reliable statistics.

- *Date and Type of First New Offense.* The offense date (not the incarceration date, filing date, or disposition date) of the first new offense is an important measure, along with the applicable statute. The date is critical to determining whether an offense lies within the exposure period; furthermore, it is useful to track *how long* it takes for people to recidivate as well as whether they ever did.
- *Date and Type of Most Serious New Offense.* The first offense is often not the most serious during the exposure period; for example, new felonies are often preceded by misdemeanors or probation violations that may be described as harbinger offenses. The community's interest in recidivism is measured not only by the overall rate, but by the kinds of offenses that recidivists commit. Such descriptions will benefit from a hierarchical classification system that identifies the most serious new offense during the exposure period.⁴ Such a system also helps to identify the controlling or most serious charge for any particular case or conviction.
 - Because felony and misdemeanor patterns differ, many studies count them separately.

Data Sources. The most reliable data on offenses are recorded by Superior Courts and assembled by the Department of Justice. Probation violations and jail admissions pose distinct challenges, particularly in statewide studies.

- Optimal capacity to detect and correct errors (e.g., about index dates) and address questions of interpretation is achieved if researchers are provided with a complete listing of all offenses ever reported for study subjects; complete datasets on offenses also permit description of criminal history and its association with recidivism.
- For studies of populations other than people released from prison, even narrowly defined new offense measures require County-level jail data to identify index dates. Other records may be required to identify subjects who would be censored because they were deceased, hospitalized or detained in jail for previous offenses.

⁴ A system for coding offenses by type and seriousness was developed by the Washington State Institute for Public Policy and adapted for use in California by CDCR and at least one county; a simpler, compatible system is used by researchers at Irvine. Given the utility of a well-constructed hierarchical system for recidivism studies and jail population analysis, and the effort required to update and maintain it as new legislation and policy objectives emerge, it is worth considering whether a single state agency should provide this service to counties and other agencies concerned with assessing results. A well-constructed system with the appropriate degree of granularity is compatible with, and indeed facilitates, alternate rankings for particular policy purposes.

Average Daily Population (ADP)

Previous BSCC publications explain how to measure and report ADP, which refers to an arithmetical mean of daily counts of a *population* over a *period* (*who* and *when*).⁵

1. *Population.* The concept of ADP is clearest if *who* covers the people in a setting for which daily counts would make sense. Total confinement, i.e., being locked into a facility continuously, is an appropriate setting for ADP:
 - Knowing who is in your facility (and where they are) is a fundamental operational requirement for corrections;
 - The population changes on a daily basis, and it is common for people to be booked and released the same day.
 - Facilities normally use a midnight count as the standard daily measure.

The concept of ADP can be extended to other settings, e.g., to hospitals which, like jails, feature overnight stays and daily changes in their patient census. Before extending ADP to numbers of people on probation or attending a program, it is helpful to consider whether daily counts make sense. If a program is better described in terms of enrollment and attendance, these terms should be used rather than confounding them with ADP: especially programs in which participants are not present every day.

2. *When.* ADP is meaningful only if one specifies the time period over which daily counts are being averaged. ADP can be measured annually, monthly, weekly, or in some other way if policy interests require it, but it will rarely be useful to calculate a population average over just a few instances.

ADP and Length of Stay (LOS). The size and composition of an institution's ADP is a function of two factors: the number of people booked into a facility and how long they stay. A jail may have more bookings for misdemeanors than for felonies, but people detained or convicted on felony charges constitute a larger share of ADP because they stay longer.

- BSCC's LOS instructions for the jail profile survey make clear that LOS is the length of an *admission*, i.e., a continuous stay in jail, which may include multiple cases, charges, and changes in sentencing status. The admission and release dates for a particular booking may not define the entire admission because an inmate may be released from one booking and rebooked on a different case or with a different status without leaving jail.

⁵ Board of State and Community Corrections. 2012. *Jail Profile Survey Workbook*. Sacramento, CA: Author.

Treatment Program Completion Rate

In a defined cohort, a treatment program completion rate is the percentage of people entering a program who go on to complete it. This rate is critical to assessing program implementation and outcomes.

- A program may boast a high success rate for graduates, but if most participants drop out or are terminated, it raises questions about whether the success rate reflects the benefits of the program or its knack for weeding out participants with risky prospects. Perhaps those who completed the program were those with the grit and resources to succeed anyway (e.g., maintain sobriety, obtain employment, or become law-abiding citizens).

This issue, often described as “intent to treat,” complicates assessment of findings; to address it, we suggest that three factors be specified. The first two define the population whose program completion rate is being measured (the denominator of the rate); the last, the completers (the numerator).

1. *Inclusion and Exclusion Criteria.* In the common practice of referring defendants or offenders to substance abuse treatment in lieu of confinement, criteria may include the nature of the offense (misdemeanor or felony, violent or property, drug-related or not), legal status (pretrial, deferred, sentenced), and clinical status of the prospective participant (abuse or dependence).
 - These criteria shape the composition of the program population. Specifying these factors also facilitates identification of reference or control groups for evaluation purposes. Furthermore, interpretation of results is advanced by describing surrounding factors such as sanctions or incentives for participation (e.g., consequences of refusing to participate, rewards for completion).
2. *Program Suitability Assessment.* Referral to treatment programs for criminal justice system clients usually involves a variety of agents, including courts, corrections, parole, probation, and program administrators. A thorough assessment of suitability for treatment is not always accomplished before participants walk through the door: for example, people whose arrest involves bizarre behavior may be referred to a crisis center for mental health evaluation and treatment in lieu of jail, but it may not be possible to diagnose and assess need or suitability until they’ve been there a while.
 - If an initial period can reasonably be described in terms of assessing suitability, its length should be specified in advance of analysis, as well as the process and criteria, if such exist, for continuing someone in a program. Suitability exclusions should be justifiable in terms of the referral process and program objectives.

- If participants are excluded from evaluation (censored) because they were found unsuitable after program entry, program evaluation is best served by limiting such exclusions in scope or timing: eyebrows would rightly be raised by labeling the first 30 days of a six-week program as an assessment period and therefore excluding from the completion rate everyone who didn't quite make it through that first month.
 - Even if some people referred to a program are reasonably excluded from the rate statistic on grounds of suitability, interpretation of evaluation findings is served by recording their characteristics and tracking their outcomes.
3. *Criteria for completion.* These too will depend on the nature and objectives of a program. Some programs have a formal graduation ceremony for people who have met all program expectations, which sometimes include a period of maintaining the positive behavior the program seeks to achieve. Other programs may let go of people because they're transferred elsewhere, staff judge that there is little more the program can do for them, or their time is up and their slot is needed for someone new. Any of these events may qualify as completing the program; describing the criteria and rationale for distinguishing completers from other participants will assist interpretation of findings.

Next Steps

This analysis is undertaken on the premise that discussions about measuring policy outcomes are more usefully framed by the policy interests at stake than by concerns over terminology. The concepts cited in AB1050 were well chosen to cover a broad range of information about how things are going, at levels ranging from sweeping policy changes such as Realignment to individual projects such as the evaluation of a non-custodial intervention program for substance-abusing offenders.

In the wake of Realignment, as discussion proceeds of evidence-based approaches to criminal justice policy, other terms have cropped up for which additional clarity may be useful. *Risk assessment* has often been mentioned and recommended, not only for allocating supervision caseloads and planning programs, but as part of the legal process that generates terms and conditions of supervision, program referrals, and alternative sanctions. The role of risk assessment, in relation to concerns about justice and what offenders deserve, is fraught with concerns that range far beyond terminology. For this reason, it may be wise to postpone consideration of risk assessment and other key terms until guidance is provided by discussion of the three concepts described above.